

Circuit Court for Baltimore County
Case No. C-03-CV-20-001164

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 0729
September Term, 2020

MICHAEL C. WORSHAM
v.
ORIENTAL TRADING COMPANY, INC.

Arthur,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: March 24, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Michael Worsham, who is self-represented, sued appellee, Oriental Trading Company, Incorporated (OTCI), for alleged violations of Maryland’s anti-spam statute on March 16, 2020, in the Circuit Court for Baltimore County. That court granted OTCI’s Motion to Dismiss for lack of personal jurisdiction and failure to state a claim.

On appeal, Mr. Worsham presents four questions, which we have slightly reworded and reordered:

- I. Whether the circuit court erred in issuing a deficiency notice for his Motion to Alter or Amend and Motion for Leave to Amend.
- II. Whether the circuit court erred in denying his Motion for Leave to Amend Complaint.
- III. Whether the circuit court erred in granting appellee Oriental Trading’s Motion to Dismiss for lack of personal jurisdiction.
- IV. Whether the circuit court erred in granting appellee Oriental Trading’s Motion to Dismiss for failure to state a claim.

For the reasons explained below, we affirm the dismissal of the complaint for lack of personal jurisdiction and vacate the dismissal of the complaint for failure to state a claim.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Worsham is a Maryland resident who has resided in his current Maryland home since 1993. OTCI is a Nebraska corporation with its headquarters in Omaha. On November 23, 2019, Mr. Worsham placed an online order with OTCI. That same day, OTCI sent an order confirmation to his email address. The requested product was delivered to his residence on November 29, 2019.

OTCI requires all of its customers to agree to receive promotional emails when they provide their email address to OTCI, but they can unsubscribe any time thereafter. Almost immediately, OTCI began sending promotional emails. Mr. Worsham alleged in his complaint, and OTCI admitted in its response to Mr. Worsham’s request for admissions, that OTCI sent him 34 promotional emails.

Mr. Worsham included in his complaint the subject lines of each of the 34 emails he received. But he focuses on the following three sets of emails to support his contention that the subject lines were false or misleading and created a false sense of urgency about an expiring special offer:

- An email sent on December 11, 2019, with the subject line *“Today Only! Free Shipping, Any Order + \$10 eGift Card | Chic Tables Start Here!”* which was followed by another email sent on December 12, 2019, with a subject line *“Holiday Lightning Deals Extended, Free Shipping on ANY Order & \$10 eGift Card!”*
- An email on January 14, 2020, had the subject line *“Last Day for FREE Shipping on Any Order!”* which was followed by an email on January 15, 2020, with the subject line *“FREE Shipping, Any Order + Up to 60% off Wedding Supplies.”*
- An email sent on March 5, 2020, with the subject line *“Hurry! Final Day for FREE Shipping, ANY Order!”* followed by an email the next day with the subject line *“Looking for Inspiration? Get Started with Free Shipping.”*

According to Mr. Worsham, the free shipping offer never expired but the subject lines of these emails misled consumers into believing that it would.

Mr. Worsham alleged in his complaint that the emails from OTCI violated the Maryland Consumer Electronic Mail Act (MCEMA). Md. Code Ann. Com. Law § 14-

3001–3003. More specifically, he asserts that their subject lines contained false and misleading information; that they were unsolicited; that OTCI initiated email transmissions to an electronic address it should have known was held by a Maryland resident; and, citing Maryland Commercial Law Article § 14-3002(c),¹ that OTCI is presumed to know that the person receiving the email is a Maryland resident if the information is available on request from the registrant of the Internet domain name contained in the recipient’s email address.

On May 22, 2020, OTCI filed a Motion to Dismiss for lack of personal jurisdiction and for failure to state a claim, and, on June 15, 2020, a Motion to Stay Discovery. In its motion to stay, OTCI asked the circuit court to address that motion first and, if that motion was denied, to allow OTCI at least thirty days after filing its answer to respond to Mr. Worsham’s discovery requests. Mr. Worsham filed an opposition to OTCI’s motion to dismiss on June 8, 2020, and, on June 22, 2020, he filed an opposition to OTCI’s Motion to Stay Discovery. He argued that the discovery and admission requests were not burdensome; that OTCI failed to comply with Rule 2–432(b)(2) by failing to attach the discovery at issue; and that OTCI would have to disclose jurisdictional discovery no matter what. On June 29, 2020, OTCI filed notice that it had served responses to Mr. Worsham’s request for admissions.

¹ Section 14-3002(c) provides: “A person is presumed to know that the intended recipient of commercial electronic mail is a resident of the State if the information is available on request from the registrant of the Internet domain name contained in the recipient’s electronic email address.”

Mr. Worsham filed a Motion to Compel Discovery on July 8, 2020. He requested responses to his May 29, 2020, interrogatories and requests for production of documents and admissions. On June 10, 2020, the circuit court granted in part the Motion to Stay Discovery by permitting discovery only on the issues presented in the Motion to Dismiss. OTCI responded to Mr. Worsham’s Motion to Compel on July 22, 2020. It argued that it had already responded to the requests related to jurisdiction and the other requests centered on the merits of the case. On July 27, 2020, Mr. Worsham responded that OTCI had not answered all of the jurisdictional requests, citing the interrogatories and requests he believed were jurisdictional or pertained to the Motion to Dismiss.

On July 30, 2020, the court denied Mr. Worsham’s Motion to Compel because it was “unable to determine whether, since the court’s July 10th Order, [OTCI] has failed to provide discovery that may be relevant to the Motion to Dismiss.” It permitted Mr. Worsham to file a new Motion to Compel if he believed that OTCI’s “failure to respond to discovery ultimately falls short of what is required by the Court’s July 10th Order.” Mr. Worsham filed a renewed Motion to Compel on August 12, 2020, which was denied at the August 20, 2020, hearing on OTCI’s Motion to Dismiss.

In its answers to interrogatories and admissions that were received by Mr. Worsham on August 9, 2020, OTCI admitted to sending, in the previous two years: 10,000 emails to customers who had purchased items that were shipped or billed to Maryland; a portion of the 4.5 million catalogs into Maryland that it sent throughout the country; and over 160,000 orders to customers who had purchased items that were billed to a Maryland address. It

claimed, however, that it did not have sufficient information to know the actual locations of the purchasers.

At the August 20, 2020, hearing, the circuit court heard argument on both the motion to compel and the motion to dismiss on jurisdictional grounds and for failure to state a claim. The circuit court, before ruling on the Motion to Dismiss, explained that it was “ruling on the motion based on Mr. Worsham’s complaint, and Mr. Worsham’s complaint alone,” and was considering only “the well-pleaded facts as opposed to the more general bald assertions that may or may not be supported by well-pled facts.”² In its determination, the court did not consider the information regarding OTCI’s activities involving Maryland provided in its admissions or interrogatory answers when granting the motion because Mr. Worsham failed to file an affidavit as required by Maryland Rule 2-311(d) supporting the new information in his supplements to his response to the motion to dismiss.³

² The jurisdictional assertions made in Mr. Worsham’s complaint included the following:

- 28. Defendant regularly advertises into Maryland, not just to Plaintiff.
- 29. Defendant regularly transacts business in Maryland, and in this County.
- 30. Defendant regularly contracts to supply goods or services in Maryland.
- 31. Defendant regularly causes tortious injury, such as invasion of privacy, in Maryland by acts or omissions in Maryland, including through computers and telephone or cable lines.
- 32. Defendant causes tortious injury in Maryland or outside Maryland by acts or omissions outside Maryland by regularly soliciting business and engaging in persistent conduct (including emailing) in Maryland, and derives substantial revenue from goods or services used or consumed in Maryland.

³ Rule 2-311(d) states that “[a] motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

In regard to general personal jurisdiction, the court stated “there would have to be facts that support the notion that the defendant is specifically targeting the citizens of Maryland, more than a bald allegation.” According to the court, the complaint did not “provide the necessary factual support that illustrates that the defendant has a continuous and systematic presence here in the State of Maryland that would be required for jurisdiction,” and it failed to “allege specific facts that the defendant has a physical presence here or specifically targets the citizens of Maryland.” It concluded that the complaint did not rise “to the level that would permit [it] to consider there to be general personal jurisdiction. . . .”

As to specific personal jurisdiction, the trial court identified several factors “[i]t need[ed] to consider.” The first was the extent to which a defendant had purposefully availed for itself the privileges of conducting activities in Maryland. It explained that factor is satisfied when “it knows that its solicitation would go to a Maryland resident and its solicitation was specifically and deliberately designed to convince the recipient to engage in its services and promote its product.” The second factor was whether the “claims arise out of those activities directed to the State” and those “contacts with the [State] are related to the operable facts of the controversy.” The third factor was whether the exercise of personal jurisdiction would be constitutionally reasonable.

In ruling on specific personal jurisdiction, the court found that OTCI’s email interactions with Mr. Worsham were initiated by him and that the interactions detailed in his complaint followed his purchase of an item from OTCI. In discussing purposeful

availment, the court stated that OTCI did not “initiate[] the relationship” with Mr. Worsham and “did not send [him] uninvited advertisements at the outset.” And there were no “specific facts alleged to that effect, perhaps bald assertions but not facts.” In addition, it stated that the “emails alleged to have been sent in the case are not [OTCI’s] ‘product’ [but] a means of advertising.”

The court granted the motion to dismiss, with prejudice, based on both the lack of personal jurisdiction and the failure to state a claim.⁴

Following the entry of the order dismissing the action with prejudice on August 21, 2020, Mr. Worsham filed, on August 31, 2020, a “Motion to Alter or Amend Order Dismissing Complaint with Prejudice and Motion for Leave to Amend the Complaint and Request for Hearing” (the “Post-trial Motion”). That filing was deemed deficient under Rule 20-201(e) on September 1, 2020.⁵ Mr. Worsham filed his request to withdraw the deficiency notice on September 3, 2020. The Post-trial Motion was struck on September

⁴ When the trial court granted the motion to dismiss for failure to state a claim, Mr. Worsham questioned whether, the court, having granted the motion for lack of jurisdiction, could “go any further than that.” The court responded: “Well, the way – that’s a good question. Um, if I’m wrong on jurisdiction, to save you the time of having the Court remand it to me for further consideration of whether the complaint fails to state a claim, then the appellate court knows what I’m thinking. If the appellate court takes up the failure to state a claim first and finds that I erroneously concluded from what you said and the reasonable inferences from what you’ve said, I erroneously concluded that it didn’t trigger the statute, then the Court should know that I additionally found that there was no jurisdiction. If I’m 0 for 2, well, hopefully, you’ll feel welcome when you come back, because that’s what I’ve tried to make you feel today, as well as defense counsel. So, that’s the reason for my ruling on both grounds.”

⁵ Rule 20-201(e) states: “All submission related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.”

21, 2020, and the request to withdraw the deficiency was denied on September 29, 2020.⁶ The stamped denial explained that it was denied because “motions addressing different legal principles or issues should be separately filed, pursuant to MDEC rules and guidance issued by the State Court Administrator.” Other facts may be provided in the discussion of the questions presented.

I. Deficiency Notice

Standard of Review

Rule interpretations are questions of law reviewed de novo “to determine if the trial court was legally correct.” *Williams v. State*, 457 Md. 551, 562 (2018); *Davis v. Slater*, 383 Md. 599, 604 (2004). A circuit court’s decision to deny a motion for leave to amend is reviewed under an abuse of discretion standard. *Halstad v. Halstad*, 244 Md. App. 342 (2020); *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 236 (2000) (quoting *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. Partnership*, 109 Md. App. 217, 248 (1996)). A discretionary decision premised upon legal error, however, is an abuse of discretion because a “court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009).

⁶ In his motion asking for the court to withdraw the deficiency notice, Mr. Worsham alleged calling the Clerk’s office and asking why his filing was marked as deficient. He was told that it was because the title of his Post-trial Motion contained the word “motion” two times.

Contentions

Mr. Worsham contends that the issuance of the deficiency notice and the striking of his Post-trial Motion was error. He argues that striking it was inconsistent with the acceptance of OTCI's Consolidated Motion to Dismiss for Lack of Jurisdiction over the Person and for Failure to State a Claim upon Which Relief Can Be Granted, and asserts receiving inconsistent advice in his efforts to cure the alleged deficiency. The deficiency notice instructed him to resubmit the filings as separate submissions within the "same envelope," but in response to his request to have the deficiency notice withdrawn, the circuit court instructed that "motions addressing different legal principles or issues should be separately filed, pursuant to MDEC rules and guidance issued by the State Court Administrator."

OTCI contends that the circuit court's decision not to withdraw a deficiency notice is reviewed under an abuse of discretion standard and that not withdrawing the deficiency notice was not an abuse of discretion.

Analysis

Mr. Worsham indicates his concern about having to note his appeal within thirty days of the entry of the order dismissing the complaint prior to the disposition of his Post-trial Motion. Presumably that concern was generated by the fact that the Post-trial Motion was ultimately disposed of under Rule 20-203(d)(2) because of a Rule 20-201(e) violation.⁷

⁷ The Post-trial Motion was struck pursuant to Rule 20-203(d)(2) because of a Rule 20-201(e) violation that was not cured within 14 days. Rule 20-203(d)(2) states: "The filer

Under the plain language of Rule 8-202(c), which was enacted prior to the adoption of Title 20 and the MDEC rules in May 2013, that concern was warranted. Rule 8-202(c) states that:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532, 2-534, or 11-218. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion.

In other words, his motion was neither withdrawn nor was it disposed of pursuant to Rule 2-533, 2-532, 2-534, or 11-218.

The filing of a ten-day post-trial motion under Rule 8-202(c) causes a judgment to lose its finality for purposes of appeal. *See Estate of Vess*, 234 Md. App. 173, 194 (2017) (citing *Blake v. Blake*, 341 Md. 326, 331 (1996); *Picket v. Noba, Inc.*, 122 Md. App. 566, 570 (1998)). Although Mr. Worsham’s Post-trial Motion was eventually struck from the record for being deficient, it was timely filed; and ordinarily, under Rule 8-202(c), the judgment would not be final until that motion was withdrawn or denied. *See Continental Cas. Co. v. Kemper Ins. Co.*, 173 Md. App. 542, 545-546 & n.1 (2007) (“Although appellant’s notice of appeal was premature, we have held that a notice of appeal filed prior

may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.”

to the withdrawal or disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534, is effective. Processing of that appeal is delayed until the withdrawal or disposition of the motion.” (internal quotation marks omitted)); *Waters v. Whiting*, 113 Md. App. 464, 471 (1997) (“The filing of post-trial motions deprives an otherwise final judgment of its appealability until such motions of appealability have been resolved.”); *Edsall v. Anne Arundel County*, 332 Md. 502, 508 (“[A] notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534, is effective. Processing of that appeal is delayed until the withdrawal or disposition of the motion.”). Here, the Post-trial Motion was not withdrawn or denied. It was never considered by the trial court because it was disposed of under the MDEC rules and stricken from the record.

In *Waters v. Whiting*, one defendant moved for judgment notwithstanding the verdict and a second defendant noted an appeal. There, the post-trial motion deprived the judgment of its finality but the appeal was still effective; its processing was delayed until the post-trial motion was dealt with. The facts here, of course, are different than in *Waters*, but we find guidance in its discussion of the “intersection of the principles of Rule 2-602⁸ and the rules governing post-judgment motions under 2-532, 2-533, and 2-534.” *Waters*,

⁸ Rule 2-602(a) states: “Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the right and liabilities of fewer than all the parties to the action: (1) is not a final judgment; (2) does not terminate the action as to any of the claims or any of the parties; and (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.” Subsection (b) is not implicated in this case.

113 Md. App. at 473. The Court concluded that “the rules can and should be read to effectuate the intent of the Court of Appeals to avoid piecemeal appeals.” *Id.*

We are persuaded that the filing of a timely post-trial motion incorporating a request for relief covered by Rule 8-202(c) should, in principle, extend the deprivation of finality to a post-trial motion that is disposed of under Rule 20-201(e) and struck according to Rule 20-203(d)(2). There is “a strong presumption against piecemeal appeals because, ‘beyond being inefficient and costly, they can create significant delays, hardship, and procedural problems.’” *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 227 (2010) (quoting *Silbersack v. ACandS, Inc.*, 402 Md. 673, 679 (2008)). And to hold otherwise would require a litigant to file a second appeal after the request to withdraw the deficiency is denied.

Therefore we will address the merits of the deficiency notice ruling and the denial of the request to the court to withdraw it. Rule 20-201(c) provides that in the event of an inconsistency between the MDEC rules and the other Maryland Rules, the MDEC rules “prevail.” The denial in this case states that “motions addressing different legal principles or issues should be separately filed pursuant to MDEC rules and guidance issued by the State Court Administrator.” Rule 20-201(c) requires compliance with all published policies and procedures adopted by the State Court Administrator under Rule 20-103.

The Post-trial Motion was ruled deficient because it did not comply with Maryland Rule 20-201(e), which states that “[a]ll submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes

referred to as an envelope.” The Committee notes for that section indicate by way of example: “an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be filed *as separate pleadings or papers but in a single electronic folder*.” Md. Rule 20-201(e) (emphasis added). In other words, pleadings or papers may be filed at the same time but as separate pleadings or papers.

Mr. Worsham’s Post-trial Motion included a motion to alter or amend the order dismissing the complaint with prejudice and a motion to amend the complaint in one combined filing. These motions involve “different legal principles or issues.” Rather than attempting to cure the deficiency, Mr. Worsham moved to have it withdrawn. That motion was denied and the Post-trial Motion was struck under Rule 20-203(d)(2). In short, his filing did not conform to the requirements of Maryland Rule 20-201(e). Therefore, it was not error to reject it as deficient and it was not an abuse of discretion to deny his request to remove the deficiency.⁹

II. Leave to Amend

⁹ Mr. Worsham argues that the clerk should not have accepted OTCI’s consolidated motion to dismiss his complaint on different grounds, but that issue is not before us. Mr. Worsham also posits that the information he received regarding the deficiency was inconsistent with the stamped denial of the Post-trial Motion and the verbal advice that he had used the word “motion” twice in the caption. The verbal advice appears to be a simplistic, but not inaccurate, way of explaining that the filing addressed two “different legal issues or principles.”

Mr. Worsham’s argument on this issue assumes that a request for leave to amend was before the court. It was not. His request to amend the complaint was part of his Post-trial Motion, and, as explained above, that motion was appropriately struck from the record. As a result, there was no motion to amend before the circuit court for consideration and therefore no decision or action by the court for us to review.

III. Dismissal for Lack of Personal Jurisdiction

In considering this issue we will first address the factual predicate guiding our review. As stated above, Mr. Worsham argued “facts” not considered by the trial court at the motions hearing and incorporates them in his argument on appeal. They were not considered by the trial court because there was no affidavit supporting those “facts” under Rule 2-311.

A. The Application of Rule 2-311

Standard of Review

Rule interpretations are questions of law that we review de novo “to determine if the trial court was legally correct.” *Williams v. State*, 457 Md. 551, 562 (2018); *Davis v. Slater*, 383 Md. 599, 604 (2004).

Analysis

At the August 20, 2020, hearing, the circuit court did not consider OTCI’s admissions or interrogatory answers it had given Mr. Worsham in discovery because the new facts had not been supported by affidavit under Rule 2-311(d). Rather, it ruled on OTCI’s motion to dismiss “based on Mr. Worsham’s complaint, and Mr. Worsham’s

complaint alone,” and only “consider[ed] the well-pleaded facts as opposed to the more general bald assertions that may or may not be supported by well-pled facts.”

Rule 2-311(c) and (d) state:

- (c) Statement of Ground and Authorities; Exhibits.—A written motion and a response to a motion shall state with particularity the grounds and authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wished the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303(d) or set forth as permitted by Rule 2-432(b).
- (d) Affidavit.—A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

Scully v. Tauber, 138 Md. App. 423 (2001), is instructive. The appellee in that case filed a motion for immediate sanctions and also a motion in opposition to the appellant’s motion to vacate a default judgment that included new facts not supported by affidavits. *Id.* at 426-29. The motions court considered those facts in its ruling, and this Court reversed, stating that the motions court “had no right to consider any ‘fact’ set forth by appellee in his opposition due to appellee’s failure to comply with Rule 2-311(d).” *Id.* at 431.

In supplements to his opposition to OTCI’s motion to dismiss and in the arguments in his brief, Mr. Worsham included “facts” provided in OTCI’s admissions and answers to discovery requests to support his personal jurisdiction arguments. He also argued those facts at the August 20, 2020, hearing. He has not, however, expressly argued that the court erred in applying Rule 2-311 and we perceive no error. Therefore we will not consider

those facts in our review of the court’s dismissal of the complaint for lack of personal jurisdiction.¹⁰

B. Personal Jurisdiction

Standard of Review

“The applicable standard of appellate review of the grant of a motion to dismiss for lack of personal jurisdiction is whether the trial court was legally correct.” *Swarey v. Stephenson*, 222 Md. App. 65, 97 (2015) (citing *Bond v. Messerman*, 391 Md. 706, 718 (2006)).

1. General Personal Jurisdiction

Contentions

Mr. Worsham contends that Maryland has general personal jurisdiction over OTCI because OTCI regularly advertises into Maryland, regularly transacts business in Maryland, and regularly contracts to supply goods or services in Maryland. Using information learned during discovery, which was not considered by the circuit court, Mr. Worsham argues that OTCI’s contacts are sufficient to establish OTCI’s continuous and systematic contacts with Maryland and for the court to exercise either specific or general personal jurisdiction over OTCI.

¹⁰ We do not mean to imply that those facts would necessarily change the personal jurisdiction determination. On the other hand, they could have added support to Mr. Worsham’s request to amend had the Post-trial Motion been before the court.

OTCI contends that Maryland lacks general personal jurisdiction over it because OTCI “does not have an office, agent, or continuous presence in Maryland to establish continuous and systematic general business conduct.” It argues that Mr. Worsham has only alleged that OTCI “regularly advertises into Maryland” and “transacts business in Maryland.”

Analysis

The Supreme Court has explained that the operative question in a general personal jurisdiction analysis is not simply whether the defendant’s contacts are “continuous and systematic,” but whether those “affiliations with the state are so continuous and systematic as to render it essentially at home in the forum state.” *Daimler AG v. Bauman*, 571 U.S. 117, 138-39 (2014) (cleaned up) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A corporation is ordinarily only “at home” in its place of incorporation or where its principal place of business is located. *Daimler*, 571 U.S. at 137. When the complaint fails to provide factual support that a defendant has established such a presence in Maryland, exercising personal jurisdiction over them would be unconstitutional. *See Beyond Systems, Inc v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 25 (2005).

Mr. Worsham alleged that OTCI is specifically targeting Maryland residents, that it regularly advertises to Maryland residents, regularly conducts business in Maryland, regularly causes tortious injury in Maryland through computers, and solicits business through persistent emailing. The trial court found that these broad conclusory allegations

were not supported by specific facts, and insufficient to prove a continuous and systematic presence in Maryland for jurisdiction over OTCI. We agree and hold that the circuit court did not err in concluding that the exercise of general personal jurisdiction would be unconstitutional in this case.

2. Specific Personal Jurisdiction

Contentions

Mr. Worsham also contends that OTCI's contacts with Maryland would be sufficient to establish specific personal jurisdiction. In addition to the 34 email subject lines included in the complaint, which he contends are sufficient in themselves, he argues, as he did for general personal jurisdiction, that the 160,000 orders billed to Maryland addresses, that a portion of the 4.5 million catalogs mailed to Maryland addresses, and that the 10,000 emails sent to customers who had their orders shipped or billed to Maryland were sufficient to satisfy the exercise of specific personal jurisdiction.

Citing two federal district court cases and a Utah case, all of which were cited approvingly in *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481 (2006), Mr. Worsham contends that sending commercial emails to someone in Maryland for the purpose of soliciting business would be sufficient to establish specific personal jurisdiction. He argues that “one who purposefully sends a product into another jurisdiction for purposes of sale may reasonably expect to be haled into court in that state.” *Id.* at 507.

OTCI contends that specific personal jurisdiction was not established because OTCI did not specifically target Maryland as a primary marketing area and that Mr. Worsham did not allege that OTCI was purposefully availing itself of the benefits of conducting its business in Maryland. Citing *Camelback II*, OTCI argues that promotional emails sent by out-of-state businesses can only support specific personal jurisdiction when the company has made the state a “primary marketing area.” *Camelback Ski Corp. v. Behning* (“*Camelback II*”), 312 Md. 330, 341 (1988).

Analysis

“Specific [personal] jurisdiction exists only when the claim ‘arise[s] out of or relate[s] to the defendant’s contacts with the forum[.]’” *Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 617 (2017) (quoting *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)). To establish specific personal jurisdiction, a plaintiff must demonstrate that “(1) the defendant has ‘purposefully directed its activities at residents of the forum’; (2) the plaintiff’s claims ‘arise out of or relate to’ those activities directed at the state; and (3) the exercise of personal jurisdiction would ‘comport with fair play and substantial justice’ so as to be constitutionally reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). To determine whether the exercise of personal jurisdiction over a foreign corporation comports with traditional notions of fair play and substantial justice, several factors are considered. They include “the burden on the defendant, the forum state’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in

obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies.” *Id.* (quoting *Burger King*, 471 U.S. at 477).

Mr. Worsham argues that the 34 emails sent to him are sufficient to establish specific personal jurisdiction in this case. To support his argument, he relies heavily on *MaryCLE*. In that case, this Court held that Maryland could exercise specific personal jurisdiction over First Choice Internet (“First Choice”), an email marketing firm. *MaryCLE*, 166 Md. App. at 515. The emails in that case were not sent to customers who had voluntarily purchased a product and added themselves to an email list and agreed to the company’s terms and conditions. *Id.* at 489. Instead, First Choice had obtained from another company the email addresses of people who had allegedly “opted-in” to that company’s services. *Id.* at 490. Without opting in to any email list, MaryCLE received dozens of unwelcomed emails. *Id.*

In evaluating the factors of the specific personal jurisdiction test, we stated that First Choice had purposely availed itself of the benefits of doing business in Maryland by sending targeted, unrequested emails into the state. We explained that First Choice’s emails did not merely “find [their] way into Maryland,” as would a product entering into the stream of commerce. *Id.* at 506. Because First Choice “*directly* caused the emails to be sent to Maryland, among other states,” we found it “reasonable for First Choice to expect to answer for those emails in Maryland, or any other state to which they were sent.” *Id.* In other words, emails were First Choice’s products, and it affirmatively “*reached out* to other

jurisdictions, including Maryland, by sending their uninvited advertisements.” *Id.* at 507-08.

MaryCLE found support in *Camelback Ski Corp. v. Behning*, 312 Md. 330 (1988) (“*Camelback II*”). In that case, the Court of Appeals explained:

[A] significant difference exists between regularly placing goods into a stream of commerce with knowledge they will be sold in another state on the one hand, and knowingly accepting economic benefits brought by interstate customers on the other hand. Ordinarily, one who purposefully sends a product into another jurisdiction for purposes of sale may reasonably expect to be haled into court in that State if the product proves to be defective and causes injury there. In addition to having caused a direct injury within the forum State, that manufacturer or distributor has purposefully availed himself of the laws of the forum State that regulate and facilitate such commercial activity. The same cannot be said of the fixed-site merchant who is simply aware that a portion of his income regularly is derived from the patronage of customers coming from other states. . . . Although he may cause an indirect impact on the forum State by injuring one of its residents, he causes no direct injury in the State, and does not avail himself of the protection or assistance of its laws.

Camelback II, 312 Md. at 340-41. Concluding that specific personal jurisdiction was not established, the Court explained that the defendant ski-resort was a “fixed-site” resort whose only contact with Maryland was mailing brochures to Maryland ski shops *upon the requests* of those shops. *Id.* at 341. Here, the emails were not OTCI’s product and Mr. Worsham “invited” the email advertisements for other products when he purchased a product from OTCI in November and provided his email address.

Mr. Worsham’s complaint fails to allege facts with the necessary specificity for the exercise of specific personal jurisdiction over OTCI. In regard to purposeful availment and whether OTCI purposefully directed its activities toward Maryland residents, Mr.

Worsham has alleged, without factual support, that OTCI regularly advertised, transacted business, and caused tortious injuries through acts or omissions in Maryland. Such bald conclusory assertions do not establish that OTCI purposefully directed its activities toward Maryland residents under the test of *Stisser* and the Supreme Court in *Burger King*. Because we hold that Mr. Worsham has failed to establish purposeful availment, there is no need to address the other specific personal jurisdiction factors.

IV. *Failure to State a Claim*

“Jurisdiction refers to two quite distinct concepts: (i) the power of a court to render a valid decree, and (ii) the propriety of granting the relief sought.” *Moore v. McAllister*, 216 Md. 497, 507 (1958). Jurisdiction must be acquired over a person “in order for a court to impose a personal liability or obligation upon a defendant in favor of a plaintiff.” *Allen v. Allen*, 105 Md. App. 359, 367 (1995). When there is no jurisdiction over the defendant and the parties are not properly “before the court,” the court is without power to “render a valid decree.” *Bereska v. State*, 194 Md. App. 664, 686 (2010) (quoting *First Federated Commodity Trust Corp. v. Maryland Comm’r of Securities*, 272 Md. 329, 334 (1974)).

Here, the circuit court’s grant of the motion to dismiss the complaint for lack of personal jurisdiction effectively disposed of the case because OTCI was not properly “before the court.” For that reason, any subsequent ruling by the court in regard to the complaint was, at most, dicta, and, by the court’s own statement, simply an indication of what it was “thinking.” See *Houghton v. County Comm’rs of Kent County*, 307 Md. 216, 221 (1986).

Vacating actions of a court acting without jurisdiction “is consistent with the treatment of the more general category of ‘void’ actions undertaken without jurisdiction.” *Bereska*, 194 Md. App. at 685-86; *U.S. v. \$95,945.18, U.S. Currency*, 913 F.2d 1106, 1107 (4th Cir. 1990) (“Not only does logic compel initial consideration of the issue of jurisdiction over the defendant—a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim—but the functional difference that flows from the ground selected for dismissal likewise compels considering jurisdictional . . . questions first.”). Therefore we vacate that part of the circuit court’s order dismissing the complaint for failure to state a claim.

THE DECISION OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED IN PART, REVERSED IN PART, AND THE DISMISSAL FOR FAILURE TO STATE A CLAIM IS VACATED. COSTS TO BE PAID THREE-FOURTHS BY APPELLANT, AND ONE-FOURTH BY APPELLEE.